

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-031021-001 DT

01/10/2013

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
C. McCain
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI
JENNIFER L WILLMOTT

TRIAL MINUTE ENTRY
DAY 12

Courtroom SCT5C

State's Attorney:	Juan Martinez
Defendant's Attorney:	Kirk Nurmi and Jennifer Willmott
Defendant:	Present

Court Reporter, Mike Babicky, is present.

A record of the proceeding is also made by audio and/or videotape.

Prior to the start of Trial, State's Exhibit #237 is split and State's Exhibit #'s 317 thru 320 are marked for identification.

10:36 a.m. Trial to Jury continues from 01/10/2013.

The jury is present.

Special Agent Nathan Mendes is sworn and testifies.

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LET THE RECORD REFLECT the witness makes an in court identification of the Defendant.

Exhibit # 245 is received in evidence.

The witness testifies further.

Exhibit #'s 317 thru 320 are received in evidence.

The witness testifies further.

Exhibit #'s 237.001 thru 237.022 are received in evidence.

The witness testifies further.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

The witness testifies further.

The witness steps down.

Lisa Perry is sworn and testifies.

11:57 a.m. The Jury is reminded of the admonition and stand in recess. Court remains in session.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the Court and on the record.

12:00 p.m. Court stands in recess until 1:30 p.m.

1:29 p.m. Court reconvenes with Defendant and respective counsel present.

Court Reporter, Mike Babicky, is present.

The Jury is present.

The witness testifies further.

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LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

The witness testifies further.

State's Exhibit # 321 is marked for identification.

The witness testifies further.

LET THE RECORD REFLECT Juror Questions have been received by the Court; same are discussed with Counsel out of hearing of the jury, and the Court addresses the witness regarding the issues.

FILED: Juror Questions

The witness steps down.

Detective Esteban Flores having been previously sworn testifies further.

Exhibit # 295 is offered in evidence.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

Exhibit # 295 is received in evidence.

The witness testifies further.

Exhibit #'s 247 and 248 are offered in evidence.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

Exhibit #'s 247 and 248 are received in evidence.

The witness testifies further.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

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The witness testifies further.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

The witness testifies further.

2:53 p.m. The Jury is reminded of the admonition and Court stands in recess.

3:12 p.m. Court reconvenes with Defendant and respective counsel present.

Court Reporter, Mike Babicky, is present.

The Jury is present.

The witness testifies further.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

The witness testifies further.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

The witness testifies further.

LET THE RECORD REFLECT Counsel approach the bench and discussion is held out of the hearing of the jury and on the record.

The witness steps down.

Jodi Legg is sworn and testifies.

State's Exhibit # 322 is marked for identification.

The witness steps down.

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3:43 p.m. The Jury is reminded of the admonition and stand in recess until 01/14/2013 at 10:30 a.m. in this division. Court remains in session.

3:48 p.m. Court convenes in judicial chambers with Defendant and respective Counsel present.

Court Reporter, Mike Babicky, is present.

Discussion is held regarding the security belt the Defendant is required to wear by MCSO.

Counsel for the Defendant objects to the matter being discussed in chambers and requests to argue in the Court room before the media.

The Court grants the Defendant's request to return to the court room.

3:55 p.m. Court reconvenes back in the court room with Defendant and respective Counsel present.

Court Reporter, Mike Babicky, is present.

Argument is presented on Defendant's Motion for Mistrial and Motion for New Probable Cause Hearing.

The Court finds the Defendant's Motions are not timely filed however, even if they had been timely filed the Court finds the testimony of Detective Flores would not have changed Judge Duncan's Ruling in 2009.

IT IS ORDERED denying the Motion for Mistrial and the Motion for New Probable Cause Hearing.

Counsel for the Defendant requests Exhibit #'s 288 and 289 be admitted in evidence for purposes of this hearing only.

IT IS ORDERED Exhibit #'s 288 and 289 are admitted in evidence for purposes of this hearing only.

4:23 p.m. Court stands in recess until 01/14/2013 at 10:30 a.m. in this division.

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This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.

LATER:

The court has considered the defendant's oral motion for new finding of probable cause on the aggravating factor that the offense was especially cruel, the minute entry ruling of the court dated August 18, 2009, the testimony of Kevin Horn on January 9, 2012, the testimony of Detective Esteban Flores on January 10, 2012, and the oral argument of counsel on January 11, 2012.

The court finds the motion for a new finding of probable cause on the aggravating factor is not timely. Defense counsel learned approximately one year ago that the testimony of Detective Flores at the hearing held on August 7, 2009 was inconsistent with the testimony of the medical examiner Kevin Horn. The inconsistency relates to the sequence of the wounds inflicted on the victim on June 4, 2008. A motion for a new finding of probable cause should have been filed no later than 20 days prior to trial. Rule 16, *Arizona Rules of Criminal Procedure*. Also see *Chronis v. Steinle*, 208 P.3d 210 (2009), and Rules 13.5 and Rule 5, *Arizona Rules of Criminal Procedure*.

The court further finds that, even if timely filed, the motion for new finding of probable cause should be denied. The court finds the evidence relating to the sequence of the wounds was not material to the issue of whether there was probable cause to believe the offense was especially cruel under the theory the crime involved both physical and mental suffering of the victim. See minute entry dated August 18, 2009. The court's findings in August 2009 support that court's determination the victim suffered both physically and mentally regardless of when the wounds were inflicted, and that the defendant knew or should have known that the victim would suffer. In its ruling, the court noted the victim was stabbed 27 times, had defensive wounds from grabbing the knife and was shot on the right side of his head. The bullet lodged in the victim's left cheek. The defendant told police the victim was unconscious after being shot but crawled around and was stabbed. Based upon these facts, the court concluded the victim would have felt pain and mental anguish associated with the multiple wounds. The court finds the inaccurate testimony of Detective Flores at the hearing on August 7, 2009 would not have changed the court's finding that the offense was especially cruel and was thus harmless error. See *Pitts v. Adams*, 179 Ariz. 108, 876 P.2d 1143 (1994).

The court further finds that the evidence presented at trial in January 2012, including the testimony of Kevin Horn on January 9, 2012, established probable cause to believe the offense was especially cruel under the theory that it involved both physical and mental suffering of the

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victim. The court finds this evidence established probable cause the victim would have felt pain and mental anguish associated with the multiple wounds inflicted, and the defendant knew or should have known that the victim would suffer. See *State v. McCray*, 218 Ariz. 252, 259, 183 P.3d 503 (2008), *State v. Sansing*, 206 Ariz. 232, 235, 77 P.3d 30 (2003) and *State v. William Herrera Jr.*, 176 Ariz. 21, 859 P.2d 131 (1993).

IT IS ORDERED denying the oral motion for new finding of probable cause on the aggravating factor the offense was especially cruel.

IT IS FURTHER ORDERED denying the motion for mistrial based upon the inaccurate testimony of Detective Flores at the hearing conducted on August 7, 2009.